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EXAMINER

HAND, MELANIE JO

ART UNIT	PAPER NUMBER
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3761

NOTIFICATION DATE	DELIVERY MODE
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10/29/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/541,823	Applicant(s) CIOK ET AL.	
	Examiner MELANIE J. HAND	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-52 and 56 is/are rejected.
- 7) ☒ Claim(s) 53-55, 57-59 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. It is noted that this action is non-final because of the new ground of rejection of claim 56 presented herein, which was previously withdrawn from consideration by the examiner.

Response to Arguments

2. Applicant's arguments filed June 21, 2009 have been fully considered but they are not persuasive.

3. As to the extensive arguments regarding whether the torus of Nielsen is locked into a rolled configuration, applicant is no doubt aware that claim 37 only recites "locked in" and recites no additional structural elements or features other than the adhesion between the first adhesive surface and the adhesive upper surface as being responsible for this locking. Examiner will now address the argument regarding a hydrophobic adhesive since the two arguments are related. The reason examiner is focusing on what applicant considers an ambiguous portion of text regarding a potential adhesive on the upper surface is because it is part of the disclosure. Examiner is entitled to rely on any portion of a disclosure when rejecting a claim. Examiner would also like to remind applicant that the position taken in the rejection of claim 37 is that Nielsen suggests, not discloses, a hydrophobic second adhesive on the adhesive upper surface of the moldable backing, and that the device thus suggested by Nielsen, meets the limitation of a torus locked in position as claimed because it meets the claim limitations regarding first and second adhesives. A detailed reasoning was provided both in the Response to Arguments section and the rejection of claim 37 as to why examiner took the position that Nielsen is fairly suggesting a second adhesive on the upper adhesive surface and that the adhesive suggested must be hydrophobic, and applicant is encouraged to refer back to that reasoning.

4. As to the arguments regarding the seeming lack of basis for non-election of claims 53-59 in the non-final action mailed March 3, 2009, upon further review of the claims and specification, examiner is withdrawing the non-election by original presentation and claims 53-59 are examined herein on the merits.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 37-52 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen (WO 98/53771 A1).

With respect to **claim 37**: Nielsen discloses an ostomy appliance body side member 1 comprising an adhesive wafer in the form of a moldable mass of adhesive 7 having an inner rim defining a hole for accommodating a stoma. The wafer 7 is a moldable mass of hydrophilic hydrocolloid adhesive and thus necessarily has a first moisture-absorbing adhesive surface for securing the appliance to a user's skin, as is the nature of a hydrophilic hydrocolloid adhesive. The wafer 5 has a second surface covered with a carrier sheet 16 (Fig. 1, Page 6, lines 19-21)

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A portion of the adhesive wafer 7 surrounding the stoma, specifically the inner rim, has balanced plastic and elastic properties (Page 11, lines 20-24) A central part of the second surface of said wafer 7 surrounding said stoma-accommodating hole is provided with an adhesive layer in the form of a moldable backing thereon (Figs. 3,7, Page 8, lines 10-14) that is compatible with the first adhesive surface inasmuch as Nielsen discloses that it is sprayed on the adhesive wafer second surface and it allows the temporary adhesion of the first surface to the second surface 5 shown in Fig. 7. The adhesive layer/moldable backing has an adhesive upper surface that allows the hole to be enlarged by rolling up the inner rim to form a torus 20. (Fig. 7, Page 12, lines 3-6) The torus 20 is locked in said rolled up position by adhesion between the first hydrocolloid adhesive surface that has swelled upon absorption of moisture, and said adhesive upper surface of the moldable backing as provided on said second surface.

Nielsen discloses that the adhesive moldable backing defining the adhesive second surface is made of a material that is a polymer material that protects the second surface of the wafer 7 from stoma secretions. (Page 8, lines 10-13) Nielsen also discloses that the torus is held in its locked position by swelling of the hydrocolloid adhesive from the first surface against both the stoma and the second surface defined by the moldable backing that causes release from the second surface defined by said moldable backing. (Page 8, lines 8-10, Page 12, lines 3-9) It is examiner's position that if the moldable backing adhesive and the second surface defined thereon was hydrophilic, the humidity and secretions disclosed by Nielsen would cause the first surface hydrocolloid adhesive to stick excessively to the moldable backing, interfering with its release from the second surface and subsequent expansion to properly fit the stoma. Therefore, although Nielsen does not explicitly disclose that the moldable backing adhesive layer defining the second surface is a hydrophobic adhesive layer, it would be obvious to one of ordinary skill in the art to modify the device of Nielsen such that the moldable backing adhesive

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layer provided on the second surface of the wafer is a hydrophobic adhesive layer. This ensures that the moldable backing is in fact protecting the wafer from secretions, and is not absorbing moisture in such a manner as to interfere with the expansion of the first surface hydrocolloid adhesive to fit snugly around the stoma. The device fairly suggested by Nielsen thus renders the limitation “the torus being locked in said rolled up position by adhesion between the first adhesive surface and said adhesive upper surface of the hydrophobic adhesive layer as provided on said second surface” obvious.

With respect to **claim 39**: Adhesive wafer 7 disclosed by Nielsen is made from an adhesive including hydrocolloids. (Page 8, lines 8-10)

With respect to **claim 40**: As can be seen in Fig. 1, the carrier sheet 16 is absent on a central part of the second surface surrounding the stoma.

With respect to **claim 41**: The hydrophobic adhesive of the moldable backing suggested by Nielsen stretches under at least a portion of the carrier sheet 16. (Fig. 1) The motivation to modify the device of Nielsen so as to have a moldable backing that is a hydrophobic adhesive layer defining a second surface is stated *supra* with respect to claim 37.

With respect to **claim 42**: A release liner 15 disclosed by Nielsen protects the first adhesive surface. (Fig. 1, Page 6, lines 9, 10)

With respect to **claim 43**: The carrier sheet 16 disclosed by Nielsen extends to the central part of the wafer 7. (Fig. 1)

With respect to **claim 44**: The carrier sheet 16 on a central part of the second surface of the adhesive wafer 7 surrounding the stoma is provided with a weakening pattern in the form of a slit liner in the area defining handle 17. (Page 6, lines 23-25)

With respect to **claim 45**: The part of the adhesive wafer 7 surrounding the stoma is formed as an exchangeable sealing member associated with a receiving member 4 and is disposed in a hole of the wafer and having a hole for accommodating a stoma. (Page 7, lines 15-18)

With respect to **claim 46**: Body side member 1 further comprises a coupling component 18 for releasable attachment of a receiving bag 4. (Page 8, line 22)

With respect to **claim 47**: The coupling component disclosed by Nielsen includes matching coupling rings 18. (Page 8, line 22)

With respect to **claim 48**: Nielsen discloses an ostomy sealing member in the form of bodyside member 1 that is in the form of a mouldable mass or ring 7 having balanced plastic and elastic properties comprising a first adhesive surface to adhere to the skin and to seal around a stoma and between the stoma. The sealing member 1 also comprises an ostomy appliance in the form of receiving member 4 attached thereto and adapted to receive secretions from the stoma, a second surface facing away from the user and an inner rim defining a hole 3 for accommodating the stoma. (Fig. 1, Page 6, lines 8-19) The sealing member 1 is configured, via mass 7 having said balanced elastic and plastic properties, to allow enlargement of said stoma-accommodating hole 3 by rolling up the inner rim of the hole to form a torus 20 before placing the sealing

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member around the stoma. (Fig. 7, Page 8, lines 4-7) A part of the second surface surrounding the hole has a separate adhesive layer thereon in the form of a moldable backing which is different from and compatible with the first adhesive surface inasmuch as Nielsen discloses that it is sprayed on the adhesive wafer second surface and it allows the temporary adhesion of the first surface to the second surface shown in Fig. 7. The separate moldable backing/adhesive layer disclosed by Nielsen has an adhesive upper surface to lock the torus 20 in said rolled up position by adhesion between the first adhesive surface and said adhesive upper surface of the hydrophobic adhesive layer even when said first adhesive surface is exposed to moisture.

Nielsen discloses that the adhesive moldable backing defining the adhesive second surface is made of a material that is a polymer material that protects the second surface of the wafer 7 from stoma secretions. (Page 8, lines 10-13) Nielsen also discloses that the torus is held in its locked position by swelling of the hydrocolloid adhesive from the first surface against both the stoma and the second surface defined by the moldable backing that causes release from the second surface defined by said moldable backing. (Page 8, lines 8-10, Page 12, lines 3-9) It is examiner's position that if the moldable backing adhesive and the second surface defined thereon was hydrophilic, the humidity and secretions disclosed by Nielsen would cause the first surface hydrocolloid adhesive to stick excessively to the moldable backing, interfering with its release from the second surface and subsequent expansion to properly fit the stoma. Therefore, although Nielsen does not explicitly disclose that the moldable backing adhesive layer defining the second surface is a hydrophobic adhesive layer, it would be obvious to one of ordinary skill in the art to modify the device of Nielsen such that the moldable backing adhesive layer provided on the second surface of the wafer is a hydrophobic adhesive layer. This ensures that the moldable backing is in fact protecting the wafer from secretions, and is not absorbing moisture in such a manner as to interfere with the expansion of the first surface hydrocolloid

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adhesive to fit snugly around the stoma. The device fairly suggested by Nielsen thus renders the limitation "to lock the torus in said rolled up position by adhesion between the first adhesive surface and said adhesive upper surface of the hydrophobic adhesive layer even when said first adhesive surface is exposed to moisture" obvious.

With respect to **claim 49**: Sealing member 7 is made from an adhesive including hydrocolloids.

(Page 8, lines 8-10)

With respect to **claim 50**: Nielsen teaches a method of applying an ostomy appliance body side member having an adhesive wafer 2 with an inner rim that defines a hole 3 for accommodating a stoma, a first adhesive surface for securing the appliance to a user's skin and a second surface covered with a carrier sheet 16, a portion of the adhesive wafer surrounding the stoma having balanced plastic and elastic properties. A central part of the second surface surrounding said stoma-accommodating hole is provided with an adhesive in the form of a moldable backing/adhesive layer that is compatible with the first adhesive surface of the adhesive wafer inasmuch as Nielsen discloses that it is sprayed on the adhesive wafer second surface and it allows the temporary adhesion of the first surface to the second surface shown in Fig. 7. The method disclosed by Nielsen comprises the following steps: a) enlarging the hole to the size of the stoma by rolling the inner rim of the hole of the sealing member forming a torus 20 (Page 12, lines 3-13); b) locking the torus 20 to the second surface of the sealing member 7 in its rolled position by contact between the hydrophobic adhesive of member 7 and the first adhesive surface (Page 12, lines 14-17); and c) aligning the stoma and the stoma-accommodating hole of the ostomy appliance body side member 1 (Page 12, lines 10-13) and placing the body side member on the abdomen of the ostomate with the stoma projecting into the hole, creating a

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snug fit between the appliance and the ostomy. (Page 12, lines 10-13)

Nielsen discloses that the adhesive moldable backing defining the adhesive second surface is made of a material that is a polymer material that protects the second surface of the wafer 7 from stoma secretions. (Page 8, lines 10-13) Nielsen also discloses that the torus is held in its locked position by swelling of the hydrocolloid adhesive from the first surface against both the stoma and the second surface defined by the moldable backing that causes release from the second surface defined by said moldable backing. (Page 8, lines 8-10, Page 12, lines 3-9) It is examiner's position that if the moldable backing adhesive and the second surface defined thereon was hydrophilic, the humidity and secretions disclosed by Nielsen would cause the first surface hydrocolloid adhesive to stick excessively to the moldable backing, interfering with its release from the second surface and subsequent expansion to properly fit the stoma. Therefore, although Nielsen does not explicitly disclose that the moldable backing adhesive layer defining the second surface is a hydrophobic adhesive layer, it would be obvious to one of ordinary skill in the art to modify the device of Nielsen such that the moldable backing adhesive layer provided on the second surface of the wafer is a hydrophobic adhesive layer. This ensures that the moldable backing is in fact protecting the wafer from secretions, and is not absorbing moisture in such a manner as to interfere with the expansion of the first surface hydrocolloid adhesive to fit snugly around the stoma. The device fairly suggested by Nielsen thus renders the limitation "a central part of the second surface surrounding said stoma-accommodating hole being provided with a hydrophobic adhesive compatible with the first adhesive surface of the adhesive wafer" obvious.

With respect to **claim 51**: Nielsen teaches a method of applying a separately exchangeable ostomy sealing member 2 in a body side member 1, said sealing member having balanced

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plastic and elastic properties and including an inner rim that defines a first hole 3 for accommodating a stoma, a first adhesive surface adapted for securing the sealing member to a user's skin and for receiving secretions from the stoma, and a second surface facing away from the user. A central part of the second surface surrounding said stoma-accommodating hole is provided with an adhesive in the form of a moldable backing/adhesive layer that is compatible with the first adhesive surface of the adhesive wafer inasmuch as Nielsen discloses that it is sprayed on the adhesive wafer second surface and it allows the temporary adhesion of the first surface to the second surface shown in Fig. 7. The method disclosed by Nielsen comprises the following steps: a) locating the stoma and aligning the stoma and the hole of the body side member and placing the body side member on the abdomen of the ostomate with the stoma projecting into the hole (Page 11, line 25 – Page 12, line 3), b) enlarging the hole of the sealing member by rolling the inner rim of the hole of the sealing member forming a torus 20 (Page 12, lines 3-6), c) adapting the hole to the size of the stoma (Page 12, lines 10-13), d) locking the torus 20 to the second surface of the sealing member 7 in its rolled position by contact between the adhesive surface and the second surface of the sealing member (Page 12, lines 14-17), e) aligning the stoma and the second hole of the ostomy sealing member (Page 12, lines 10-13) and f) placing the sealing member 7 in the second hole of the body side member on the abdomen of the ostomate with the stoma projecting into the first hole 3, creating a snug fit between the appliance and the ostomy. (Fig. 1, Page 12, lines 10-13)

Nielsen discloses that the adhesive moldable backing defining the adhesive second surface is made of a material that is a polymer material that protects the second surface of the wafer 7 from stoma secretions. (Page 8, lines 10-13) Nielsen also discloses that the torus is held in its locked position by swelling of the hydrocolloid adhesive from the first surface against both the stoma and the second surface defined by the moldable backing that causes release

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from the second surface defined by said moldable backing. (Page 8, lines 8-10, Page 12, lines 3-9) It is examiner's position that if the moldable backing adhesive and the second surface defined thereon was hydrophilic, the humidity and secretions disclosed by Nielsen would cause the first surface hydrocolloid adhesive to stick excessively to the moldable backing, interfering with its release from the second surface and subsequent expansion to properly fit the stoma. Therefore, although Nielsen does not explicitly disclose that the moldable backing adhesive layer defining the second surface is a hydrophobic adhesive layer, it would be obvious to one of ordinary skill in the art to modify the device of Nielsen such that the moldable backing adhesive layer provided on the second surface of the wafer is a hydrophobic adhesive layer. This ensures that the moldable backing is in fact protecting the wafer from secretions, and is not absorbing moisture in such a manner as to interfere with the expansion of the first surface hydrocolloid adhesive to fit snugly around the stoma. The device fairly suggested by Nielsen thus renders the limitation "a central part of the second surface surrounding said stoma-accommodating hole being provided with a hydrophobic adhesive compatible with the first adhesive surface of the adhesive wafer" obvious.

With respect to **claims 52,56**: A release liner in the form of a protective film as part of said moldable backing protects the adhesive upper surface of said hydrophobic adhesive layer. The release liner is necessarily removed prior to forming said torus, as formation of the torus requires access to the upper adhesive layer to temporarily hold the inner rim in its rolled position prior to formation, release and lock of the torus 20 against the stoma. Thus if the torus is formed, the release liner has already been removed. (Page 7, lines 1-9)

Allowable Subject Matter

8. Claims 53-55 and 57-59 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Reasons for Indicating Allowable Subject Matter

9. The following is a statement of reasons for the indication of allowable subject matter:

The following is a statement of reasons for the indication of allowable subject matter: With respect to claims 53 and 57, there is no motivation to first modify the device of Nielsen (WO 98/53771 A1), the closest prior art of record, such that the wafer explicitly contains a hydrophobic adhesive layer and then further modify the resulting device so as to have a release liner protecting the hydrophobic adhesive layer that is embodied as a separator sheet covered by a carrier sheet having a weakening zone defining a central part of the carrier sheet. Nielsen only fairly suggests a hydrophobic adhesive layer and, while Nielsen discloses protecting all of the adhesive surfaces with release liners, a known practice to one of ordinary skill in the art, it would not be obvious to further modify the device by specifically protecting the hydrophobic adhesive layer with a two-layer release liner having a weakening zone. Claims 54 and 55 depend directly or ultimately from claim 53 and claims 58 and 59 depend directly or ultimately from claim 57.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Primary Examiner, Art Unit 3761